



# Republican Policy Committee

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## **More Proof Why Defense of Marriage Act Needed**

### **Clinton's State Department Asks the World's Opinion on "Same-Sex Partners" of Foreign Diplomats**

As the Senate prepares to begin floor consideration of H.R. 3396, the Defense of Marriage Act (DOMA), the ramifications of the absence of a definition of marriage in federal law are becoming more apparent. For example, should the United States accredit the "same-sex partners" of foreign diplomats stationed here as if they were spouses, with all the applicable privileges and immunities?

According to information made available to RPC by the *Lambda Report on Homosexuality*, a watchdog publication monitoring the homosexual movement, the Clinton State Department was confronted with that question earlier this year when a diplomat from an unspecified country asked to have his male "partner" accredited by the Department's Office of Protocol as a member of his household. Such accreditation extended to diplomats' families confers certain privileges and immunities, notably immunity from arrest and criminal prosecution and exemption from taxation, including state and local sales taxes.

### **Foggy Bottom Polls the World**

Among the items supplied to RPC by the *Lambda Report* is an unclassified State Department cable (number 7717 of January 9, 1996, "Subject: Same-Sex Partners") from the Department in Washington, to 21 U.S. Embassies in foreign capitals. The cable, which originated in the Office of Protocol and is signed "Christopher" (i.e., Secretary of State Warren Christopher), notes that the "Department has not received such a request before and does not have a policy regarding acceptance of same-sex partners." Each receiving post is asked to approach the foreign ministry of its host country and "learn what host country's policy is in this regard." Among the information requested is data on (a) whether the host country has an "established policy" on accrediting same-sex partners; (b) whether the "host government now or in the past has accepted such partners for privileges and immunities"; (c) "what supporting documentation host government requires"; (d) "whether host state requires as a condition for accepting the same-sex partner for privileges and immunities that sending state gives legal recognition to same-sex partnerships" — such as recognition of "a certificate or ceremony of union and/or has procedures for dissolution" — "or provides legal benefits to same-sex partners"; (e) "whether privileges and immunities are extended without limitation or whether there are restrictions"; and (f) "whether partner is listed" in the Diplomatic List, the official register of foreign diplomats accredited by the host country, "along with diplomatic spouses."

In answer to a telephone inquiry, the Office of Protocol informed RPC that the matter is still under consideration and that no action has been taken yet with respect to the request. However, the Office has compiled a catalogue of the responses received from posts, which along with the cable is available from RPC.

## **DOMA Directly Relevant**

In the context of the DOMA debate, a few issues raised by the State Department cable deserve comment. First, the current absence of a federal definition of marriage relates directly to Foggy Bottom's failure to summarily refuse the request for accreditation of "same-sex partners." (One would have hoped that even *without* DOMA, the Department would have been able to conclude that American law and custom would point to a denial of accreditation.) But as the cable itself states, the Department "does not have a policy" — hence the decision to poll the practices of foreign governments. Conversely, enactment of DOMA should provide a definitive answer to the Department's uncertainty as to how to handle the request in question, establishing policy not only for the State Department but for the rest of the federal government. Indeed, the Department informed the *Lambda Report* that it was closely watching the DOMA debate with reference to this issue.

Second, in asking whether foreign governments base their accreditation decision on a sending state's giving "legal recognition to same-sex partnerships" or providing "legal benefits to same-sex partners," the Department points to the type of recognition currently at issue in Hawaii. If enacted, DOMA would protect U.S. states from having to recognize homosexual unions (under the "full faith and credit" clause of the U.S. Constitution, Article IV) because of the *actions taken by another U.S. state*. By contrast, if the Department were to decide that a sending country's recognition was a criterion for granting accreditation, the United States would in effect be deferring officially, as a matter of international comity, to a *foreign government's* action, with uncertain ramifications for U.S. states.

Third, many U.S. states, including Maryland and Virginia (and until recently the District of Columbia), have on their books criminal sodomy statutes, although these rarely are enforced. However, if the State Department were to confer diplomatic privileges and immunities on a "same-sex partner" on the basis of a homosexual relationship, the effect would be not only to give official sanction to a liaison based on a violation of U.S. domestic law — but (in light of criminal immunity of diplomatic personnel) the U.S. government would in practice be issuing a license for selected foreigners to violate local sodomy laws.

Fourth, while the Department's cable was unclassified, it did carry the labels "SENSITIVE" and "NOFORN" (i.e., no foreign distribution). It seems that the State Department was perfectly aware that the matter addressed would be very delicate, both in a domestic and international context. This is all the more reason why the final result should be determined not by the Department's *ad hoc* survey of foreign governments but by the legitimate and sovereign deliberations of the American legislative process, as represented by DOMA.

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